

**REMARKS**

It is the understanding of the undersigned that applicant's prior representative, Paul A. Schnose, Reg. No. 39,361, telephoned Examiner Leo pursuant to the Communication Requesting Withdrawal of Final Office Action Issued Due to Unauthorized Deposit Account Charge to inquire as to when a Notice to File Missing Parts would be issued. It is also the understanding of the undersigned that Examiner Leo had indicated to Mr. Schnose that he would withdraw the final Office Action due to the improper Deposit Account Charge.

The undersigned additionally wishes to confirm, in writing, the telephone conversation today, November 23, 1999, between the undersigned and Examiner Leo. During this conversation, the undersigned was advised by Examiner Leo that (1) no missing parts are due in this application, (2) this Preliminary Amendment would be entered and considered, and (3) that no extension of time or other fees would be necessary to effect proper filing or consideration of this Preliminary Amendment. Should there be any questions in this regard, the Examiner is requested to contact the undersigned by telephone before the next communication from the U.S. Patent and Trademark Office is mailed.

In this Preliminary Amendment, independent claims 1, 20 and 22 have been amended to recite that the lugs are one of (a) directly attached to the tube walls and (b) integrally formed from the tube walls. Support for this amendment can be found, *inter alia*, in the specification at page 12, line 10 through page 14, line 14, and in the drawing figures. This feature distinguishes over the lugs of Karbach et al. (U.S. Patent 5,803,162), in which the projections 21, 22 are located on a meandering turbulence insert 20 which is a separate component from the heat exchange elements 12. Karbach et al. does not disclose or suggest (a) directly attaching the projections 21, 22 to the walls of the heat exchange elements 12, or (b) integrally forming the projections 21, 22 from the walls of the heat exchange elements 12. Accordingly, it is earnestly solicited that the combination of features recited in instant claims 1, 20 and 22 patentably distinguishes over the prior art applied in the final rejections.

New claims 23-38 have been added. Claims 1, 20 and 22 have been amended to delete amendatory subject matter added in the Amendment filed September 15, 1998, to avoid prosecution history estoppel. The deleted subject matter related to the latticed

tube bottoms being preformed, and the ends of the rectangular tubes and the tube bottoms forming a weld joint therebetween. That subject matter is not deemed necessary to distinguish over the prior art of record. New claims 36-38 include the subject matter deleted from claims 1, 20 and 22.

New claims 23, 27 and 32 recite that the lugs are molded out of the tube walls by deep drawing and pressing-together, support for which can be found at page 13, lines 18-19.

New claims 24, 29 and 34 recite that the spacing elements are integrally formed from the tube walls, support for which can be found at page 13, lines 21-26, in in drawing figure 4a.

New claims 25, 30 and 35 recite that each of the spacing elements engages a non-spacing element portion of the tube wall of an adjacent tube, support for which can be found at page 13, line 23 through page 14, line 1. This feature distinguishes over the applied reference Kun et al. (U.S. Patent 3,757,855), in which the spacers contact spacers of the adjacent tube.

New claim 26 recites that the lugs and the tube walls form a weld joint therebetween, and new claim 31 recites that the lugs are welded to the tube walls, similarly to original claim 5.

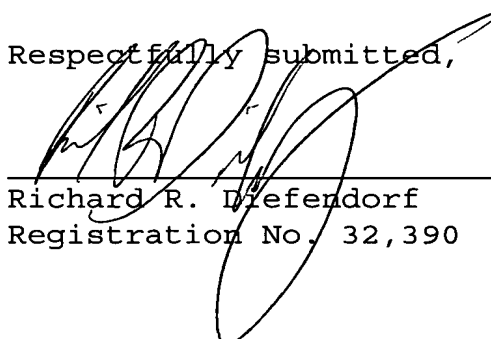
New Claims 28 and 33 recite the spacing elements, similarly to original claim 9.

In light of the foregoing amendments and remarks, it is respectfully submitted that this application is in condition for allowance, and prompt passage of this case to issue is respectfully requested. However, if there are any questions or outstanding issues which could be resolved by telephone, a telephone call to the undersigned would be appreciated, in order to expedite the prosecution of the application for all concerned.

If necessary to effect a timely response, this paper should be considered as a petition for an extension of time sufficient to effect a timely response. Please charge any fees which may be required, including fees extensions of time, or credit any overpayments to Deposit Account No. 05-1323 (Docket #027/43042).

November 23, 1999

Respectfully submitted,



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Richard R. Diefendorf  
Registration No. 32,390

EVENSON, McKEOWN, EDWARDS  
& LENAHA, P.L.L.C.  
1200 G Street, N.W., Suite 700  
Washington, DC 20005  
Telephone No.: (202) 628-8800  
Facsimile No.: (202) 628-8844